

AMENDED IN SENATE JUNE 12, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2666**

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**Introduced by Committee on Banking and Finance (Assembly Members Eng (Chair), Achadjian (Vice Chair), Fletcher, Fuentes, Gatto, Roger Hernández, and Torres)**

March 5, 2012

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An act to amend Sections 22012, 22013, 22065, 22100, 22712, 50002, 50003, 50003.5, and 50327 of, and to add Sections ~~22712.5~~, 22756, 22757, and 50316.5 to, the Financial Code, relating to mortgage loan originators.

LEGISLATIVE COUNSEL'S DIGEST

AB 2666, as amended, Committee on Banking and Finance. Mortgage loan originators.

(1) Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Corporations. Existing law, the California Residential Mortgage Lending Act, prohibits a person from engaging in the business of making residential mortgage loans or servicing residential mortgage loans in the state without a license from the commissioner. Existing law defines a “mortgage loan originator” and specifies individuals who are not mortgage loan originators, and defines other terms for purposes of the law and the act. The willful violation of the law or the act is a crime.

This bill would provide that a government employee and an employee of a nonprofit organization who originate loans exclusively in their capacity as an employee, under certain conditions as specified, are not

mortgage loan originators under the California Finance Lenders Law or the California Residential Mortgage Lending Act.

(2) Existing law prohibits a person from engaging in the business of a finance lender or broker without obtaining a license from the commissioner.

This bill would prohibit an individual from engaging in the business of a mortgage loan originator with respect to any dwelling in this state without obtaining and maintaining annually a license from the commissioner. The bill would exempt a registered mortgage loan originator, as defined, from this licensure requirement when he or she is employed by a depository institution or an affiliated company, as specified, or an institution regulated by the Farm Credit Administration.

(3) Existing law authorizes the commissioner to order an unlicensed person who is engaged in business as a broker or finance lender, or a licensee who is violating the Finance Lenders Law, to desist from engaging in that business or violating the law, as specified.

The bill would also authorize the commissioner to order an unlicensed person engaged in the business of a mortgage loan originator or a licensed mortgage loan originator to desist from violating these provisions. The bill would prohibit a person engaged in the business of making or brokering residential mortgage loans or the business of a mortgage loan originator from paying, receiving any compensation, as specified, for performing services in violation of these provisions.

(4) Under existing law an employee of a licensed ~~residential~~ residential mortgage lender or licensed mortgage loan originator or of an exempt person is not required to be licensed when acting within the scope of his or her employment.

~~This bill would allow~~

*Existing law allows a person not subject to the licensure provisions to apply to the commissioner for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators, provided that the person applying complies with all rules and orders that the commissioner deems necessary, as specified. Existing law also requires those mortgage loan originators to be covered under an exclusive written contract with, and originate mortgage loans solely on behalf of, that exempt person, hold a current insurance producer license, as specified, and have a current appointment notice, as specified.*

*This bill would apply those additional requirements only to a mortgage loan originator who is also an insurance producer.*

(5) Existing law authorizes the commissioner, after notice and a reasonable opportunity to be heard, to suspend or revoke a residential mortgage lender or mortgage loan originator license if the licensee has, among other things, violated any provision of the California Residential Mortgage Lending Act, or rule order of the commissioner under the act, and provides that the commissioner's power of investigation and examination is not terminated by the surrender, suspension, or revocation of a license.

This bill would authorize the commissioner to also deny or decline to renew a license under those circumstances, and would provide that the commissioner's power of investigation and examination is not terminated by the denial or nonrenewal of a license.

(6) Because this bill would create new crimes under the California Finance Lenders Law and the California Residential Mortgage Lending Act, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 22012 of the Financial Code is amended  
2 to read:  
3 22012. (a) "Branch office license" means a license to engage  
4 in business as a finance lender or broker at a location other than  
5 the location identified in a finance lender or broker license  
6 application or amended application.  
7 (b) "Depository institution" has the same meaning as in Section  
8 3 of the Federal Deposit Insurance Act, and includes any credit  
9 union.  
10 (c) "Federal banking agencies" means the Board of Governors  
11 of the Federal Reserve System, the Comptroller of the Currency,  
12 the Director of the Office of Thrift Supervision, the National Credit  
13 Union Administration, and the Federal Deposit Insurance  
14 Corporation.

(d) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(e) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling. “Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobilehome, or trailer, if it is used as a residence.

(f) “SAFE Act” means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

(g) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(h) For purposes of Sections 22109.2, 22109.3, and 22109.5, “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(i) For purposes of Section 22109.1, “expungement” means the subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such individual to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information, or indictment. With respect to criminal convictions in another state, that state’s definition of expungement will apply.

SEC. 2. Section 22013 of the Financial Code is amended to read:

22013. (a) “Mortgage loan originator” means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include any of the following:

(1) An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage

1 loan originator, except as provided in subdivision (c) of Section  
2 22014. The term “administrative or clerical tasks” means the  
3 receipt, collection, and distribution of information common for  
4 the processing or underwriting of a loan in the mortgage industry  
5 and communication with a consumer to obtain information  
6 necessary for the processing or underwriting of a residential  
7 mortgage loan, to the extent that the communication does not  
8 include offering or negotiating loan rates or terms, or counseling  
9 consumers about residential mortgage loan rates or terms.

10 (2) An individual who solely renegotiates terms for existing  
11 mortgage loans held or serviced by his or her employer and who  
12 does not otherwise act as a mortgage loan originator, unless the  
13 United States Department of Housing and Urban Development or  
14 a court of competent jurisdiction determines that the SAFE Act  
15 requires such an employee to be licensed as a mortgage loan  
16 originator under state laws implementing the SAFE Act.

17 (3) An individual that is solely involved in extensions of credit  
18 relating to timeshare plans, as that term is defined in Section  
19 101(53D) of Title 11 of the United States Code.

20 (4) An individual licensed as a mortgage loan originator pursuant  
21 to the provisions of Article 2.1 (commencing with Section  
22 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and  
23 Professions Code and the SAFE Act.

24 (5) An individual who is an employee of a federal, state, or local  
25 government agency or housing finance agency and who acts as a  
26 loan originator only pursuant to his or her official duties as an  
27 employee of the federal, state, or local government agency or  
28 housing finance agency.

29 (A) For purposes of this paragraph, the term “employee” means  
30 an individual whose manner and means of performance of work  
31 are subject to the right of control of, or are controlled by, a person,  
32 and whose compensation for federal income tax purposes is  
33 reported, or required to be reported, on a W-2 form issued by the  
34 controlling person.

35 (B) For purposes of this paragraph, the term “housing finance  
36 agency” means any authority:

37 (i) That is chartered by a state to help meet the affordable  
38 housing needs of the residents of the state.

39 (ii) That is supervised directly or indirectly by the state  
40 government.

1 (iii) That is subject to audit and review by the state in which it  
2 operates.

3 (6) (A) An employee of a bona fide nonprofit organization who  
4 exclusively originates residential mortgage loans for a bona fide  
5 nonprofit organization, and who acts as a mortgage loan originator  
6 only with respect to residential mortgage loans with terms that are  
7 favorable to the borrower.

8 (B) To qualify for the exemption under this paragraph, the bona  
9 fide nonprofit organization under this paragraph must register with  
10 the department on a form prescribed by the commissioner, along  
11 with documentation of all of the following by December 31 of  
12 each year:

13 (i) Status of a tax-exempt organization under Section 501(c)(3)  
14 of the Internal Revenue Code of 1986.

15 (ii) That the organization promotes affordable housing or  
16 provides home ownership education or similar services.

17 (iii) That the organization conducts its activities in a manner  
18 that serves public or charitable purposes, rather than commercial  
19 purposes.

20 (iv) That the organization receives funding and revenue, and  
21 charges fees in a manner that does not incentivize the organization  
22 or its employees to act other than in the best interests of its clients.

23 (v) That the organization compensates employees in a manner  
24 that does not incentivize employees to act other than in the best  
25 interests of its clients.

26 (vi) That the organization provides to, or identifies for, the  
27 borrower residential mortgage loans with terms favorable to the  
28 borrower and comparable to mortgage loans and housing assistance  
29 provided under government housing assistance programs.

30 (vii) That the organization is certified by the United States  
31 Department of Housing and Urban Development as a housing  
32 counselor who engages solely in traditional housing counseling  
33 services, if applicable.

34 (C) The commissioner may periodically require reports  
35 regarding the activities of the bona fide nonprofit organization,  
36 and shall examine the nonprofit organization's books and records  
37 in accordance with the regulations of the United States Department  
38 of Housing and Urban Development, or any successor guidance  
39 or requirement by the Consumer Financial Protection Bureau. If  
40 the nonprofit organization fails to provide documentation as

1 required by subparagraph (B), or if it does not continue to meet  
2 the criteria under subparagraph (B), the commissioner may revoke  
3 the nonprofit organization's status as a registered bona fide  
4 nonprofit organization.

5 (D) For residential mortgage loans to have terms that are  
6 favorable to the borrower, the terms shall be consistent with loan  
7 origination in a public or charitable context, rather than a  
8 commercial context.

9 (E) In making its determinations and examinations, the  
10 commissioner may rely on the receipt and review of:

11 (i) Reports filed with federal, state, or local housing agencies  
12 and authorities.

13 (ii) Reports and attestations prescribed by the commissioner by  
14 rule or order.

15 (c) "Registered mortgage loan originator" means any individual  
16 who is all of the following:

17 (1) Meets the definition of mortgage loan originator.

18 (2) Is an employee of a depository institution, a subsidiary that  
19 is owned and controlled by a depository institution and regulated  
20 by a federal banking agency, or an institution regulated by the  
21 Farm Credit Administration.

22 (3) Is registered with, and maintains a unique identifier through,  
23 the Nationwide Mortgage Licensing System and Registry.

24 (d) "Loan processor or underwriter" means an individual who  
25 performs clerical or support duties as an employee at the direction  
26 of, and subject to the supervision and instruction of, a mortgage  
27 loan originator licensed by the state or a registered mortgage loan  
28 originator.

29 SEC. 3. Section 22065 of the Financial Code is amended to  
30 read:

31 22065. (a) Persons not subject to this division may apply to  
32 the commissioner for an exempt company registration for the  
33 purpose of sponsoring one or more individuals required to be  
34 licensed as mortgage loan originators pursuant to the federal SAFE  
35 Act.

36 ~~(b) A mortgage loan originator who is an insurance producer~~  
37 ~~eligible for licensure pursuant to this section shall meet all of the~~  
38 ~~following requirements:~~

39 ~~(1) Be covered under an exclusive written contract with, and~~  
40 ~~originate mortgage loans solely on behalf of, that exempt person.~~

1     ~~(2) Hold a current insurance producer license under Article 3~~  
2     ~~(commencing with Section 1631) of Chapter 5 of Part 2 of Division~~  
3     ~~1 of the Insurance Code that is not suspended or revoked.~~

4     ~~(3) Have a current notice of appointment under Article 9~~  
5     ~~(commencing with Section 1702) of Chapter 5 of Part 2 of Division~~  
6     ~~1 of the Insurance Code from an insurer that controls, is controlled~~  
7     ~~by, or is under common control with that exempt person.~~

8     ~~(e)~~

9     ~~(b) An exempt person applying under the exemption~~ *exempt*  
10    *company registration procedure shall comply with all rules and*  
11    *orders that the commissioner deems necessary to ensure compliance*  
12    *with the federal SAFE Act and shall pay an annual registration fee*  
13    *established by the commissioner.*

14    ~~(d) A licensed mortgage loan originator who is an insurance~~  
15    ~~producer for an insurer authorized to do business in this state may~~  
16    ~~originate loans on behalf of a person registered pursuant to~~  
17    ~~subdivision (b) or on behalf of a licensed finance lender that~~  
18    ~~originates loans exclusively for a single person that is not subject~~  
19    ~~to licensure pursuant to subdivision (a) of Section 22050.~~

20    ~~(c) (1) A mortgage loan originator who is an insurance~~  
21    ~~producer eligible for licensure pursuant to this section shall meet~~  
22    ~~all of the following requirements:~~

23    ~~(A) Be covered under an exclusive written contract with, and~~  
24    ~~originate mortgage loans solely on behalf of, that exempt person.~~

25    ~~(B) Hold a current insurance producer license under Article 3~~  
26    ~~(commencing with Section 1631) of Chapter 5 of Part 2 of Division~~  
27    ~~1 of the Insurance Code that is not suspended or revoked.~~

28    ~~(C) Have a current notice of appointment under Article 9~~  
29    ~~(commencing with Section 1702) of Chapter 5 of Part 2 of Division~~  
30    ~~1 of the Insurance Code from an insurer that controls, is controlled~~  
31    ~~by, or is under common control with that exempt person.~~

32    ~~(2) A licensed mortgage loan originator who is an insurance~~  
33    ~~producer for an insurer authorized to do business in this state may~~  
34    ~~originate loans on behalf of a person registered pursuant to~~  
35    ~~subdivision (a) or on behalf of a licensed finance lender that~~  
36    ~~originates loans exclusively for a single person that is not subject~~  
37    ~~to licensure pursuant to subdivision (a) of Section 22050.~~

38    SEC. 4. Section 22100 of the Financial Code is amended to  
39    read:



1 22100. (a) No person shall engage in the business of a finance  
2 lender or broker without obtaining a license from the commissioner.

3 (b) Every licensee engaging in the business of making or  
4 brokering residential mortgage loans shall require that every  
5 mortgage loan originator employed or compensated by that licensee  
6 obtains and maintains a mortgage loan originator license from the  
7 commissioner under this division or Division 20 (commencing  
8 with Section 50000), or has first obtained a license endorsement  
9 from the Commissioner of Real Estate pursuant to Article 2.1  
10 (commencing with Section 10166.01) of Chapter 3 of Part 1 of  
11 Division 4 of the Business and Professions Code.

12 (c) A finance lender or broker shall not employ a mortgage loan  
13 originator whose license or license endorsement has lapsed.

14 (d) A finance lender or broker may not make or broker a  
15 residential mortgage loan unless that loan is offered by, negotiated  
16 by, or applied for through a licensed mortgage loan originator.

17 (e) Every licensee engaged in the business of making or  
18 brokering residential mortgage loans and every mortgage loan  
19 originator licensed under this division shall register with and  
20 maintain a valid unique identifier issued by the Nationwide  
21 Mortgage Licensing System and Registry.

22 (f) An individual shall not engage in the business of a mortgage  
23 loan originator with respect to any dwelling located in this state  
24 without first obtaining and maintaining annually a license in  
25 accordance with the requirements of this division and any rules  
26 promulgated by the commissioner under this chapter.

27 (g) A registered mortgage loan originator, as defined in  
28 subdivision (c) of Section 22013, is exempt from licensure under  
29 this section when he or she is employed by:

30 (1) A depository institution.

31 (2) A subsidiary of a depository institution that is owned and  
32 controlled by a depository institution and regulated by a federal  
33 banking agency.

34 (3) An institution regulated by the Farm Credit Administration.

35 SEC. 5. Section 22712 of the Financial Code is amended to  
36 read:

37 22712. Whenever, in the opinion of the commissioner, any  
38 person is engaged in the business as a broker or finance lender, or  
39 a mortgage loan originator, as defined in this division, without a  
40 license from the commissioner, or any licensee is violating any

1 provision of this division, the commissioner may order that person  
2 or licensee to desist and to refrain from engaging in the business  
3 or further violating this division. If, within 30 days after the order  
4 is served, a written request for a hearing is filed and no hearing is  
5 held within 30 days thereafter, the order is rescinded. For purposes  
6 of this section, “licensee” includes a mortgage loan originator.

7 ~~SEC. 6. Section 22712.5 is added to the Financial Code, to~~  
8 ~~read:~~

9 ~~22712.5. A person engaged in the business of making or~~  
10 ~~brokering residential mortgage loans or engaged in the business~~  
11 ~~of a mortgage loan originator shall not pay, receive, or collect in~~  
12 ~~whole or in part any commission, fee, or other compensation for~~  
13 ~~brokering, originating, or servicing a mortgage loan in violation~~  
14 ~~of this division, including a mortgage loan brokered, originated,~~  
15 ~~or serviced by any unlicensed person other than an exempt person.~~

16 ~~SEC. 7.~~

17 ~~SEC. 6. Section 22756 is added to the Financial Code, to read:~~

18 ~~22756. Notwithstanding any other law, any application for~~  
19 ~~licensure, amendment to the application or registration document~~  
20 ~~or notice filed under any of the laws administered by the~~  
21 ~~Department of Corporations, or record otherwise required to be~~  
22 ~~filed in this state as an electronic record pursuant to a nationwide~~  
23 ~~central depository for information regarding licensees, including~~  
24 ~~mortgage loan originators, or any electronic record filed through~~  
25 ~~the Nationwide Mortgage Licensing System and Registry, shall~~  
26 ~~be deemed to be a valid original document upon reproduction to~~  
27 ~~paper form by the Department of Corporations.~~

28 ~~SEC. 7. Section 22757 is added to the Financial Code, to read:~~

29 ~~22757. A finance lender, broker, or mortgage loan originator~~  
30 ~~licensed under this division shall not pay any commission, fee, or~~  
31 ~~other compensation to an unlicensed individual for conducting~~  
32 ~~activities that require a license, unless that unlicensed individual~~  
33 ~~is exempt from licensure pursuant to this division.~~

34 ~~SEC. 8. Section 50002 of the Financial Code is amended to~~  
35 ~~read:~~

36 ~~50002. (a) No person shall engage in the business of making~~  
37 ~~residential mortgage loans or servicing residential mortgage loans,~~  
38 ~~in this state, without first obtaining a license from the commissioner~~  
39 ~~in accordance with the requirements of Chapter 2 (commencing~~  
40 ~~with Section 50120) or Chapter 3 (commencing with Section~~

1 50130), and any rules promulgated by the commissioner under  
2 this law, unless a person or transaction is excepted from a definition  
3 or exempt from licensure by a provision of this law or a rule of  
4 the commissioner.

5 (b) (1) An employee of a licensee or of a person exempt from  
6 licensure is not required to be licensed when acting within the  
7 scope of his or her employment and shall be exempt from any  
8 other law from which his or her employer is exempt, except that  
9 an individual who meets the definition of a mortgage loan  
10 originator in Section 50003.5 shall be subject to this division.

11 (2) A person ~~not subject to~~ *exempt from* this division may apply  
12 to the commissioner for an exempt company registration for the  
13 purpose of sponsoring one or more individuals required to be  
14 licensed as mortgage loan originators as defined in Section 50003.5  
15 and pursuant to the SAFE Act.

16 (3) An exempt person applying under the exempt company  
17 registration procedure shall comply with all rules and orders that  
18 the commissioner deems necessary to ensure compliance with the  
19 SAFE Act and shall pay an annual registration fee established by  
20 the commissioner.

21 (c) The following persons are exempt from subdivision (a):

22 (1) Any bank, trust company, insurance company, or industrial  
23 loan company doing business under the authority of, or in  
24 accordance with, a license, certificate, or charter issued by the  
25 United States or any state, district, territory, or commonwealth of  
26 the United States that is authorized to transact business in this  
27 state.

28 (2) A federally chartered savings and loan association, federal  
29 savings bank, or federal credit union that is authorized to transact  
30 business in this state.

31 (3) A savings and loan association, savings bank, or credit union  
32 organized under the laws of this or any other state that is authorized  
33 to transact business in this state.

34 (4) A person engaged solely in business, commercial, or  
35 agricultural mortgage lending.

36 (5) A wholly owned service corporation of a savings and loan  
37 association or savings bank organized under the laws of this state  
38 or the wholly owned service corporation of a federally chartered  
39 savings and loan association or savings bank that is authorized to  
40 transact business in this state.

1 (6) An agency or other instrumentality of the federal  
2 government, or state or municipal government.

3 (7) An employee or employer pension plan making residential  
4 mortgage loans only to its participants, or a person making those  
5 loans only to its employees or the employees of a holding company,  
6 or an owner who controls that person, affiliate, or subsidiary of  
7 that person.

8 (8) A person acting in a fiduciary capacity conferred by the  
9 authority of a court.

10 (9) A real estate broker licensed under California law, when  
11 making, arranging, selling, or servicing a residential loan.

12 (10) A California finance lender or broker licensed under  
13 Division 9 (commencing with Section 22000), when acting under  
14 the authority of that license.

15 (11) A trustee under a deed of trust pursuant to the Civil Code,  
16 when collecting delinquent loan payments, interest, or other loan  
17 amounts, or performing other acts in a judicial or nonjudicial  
18 foreclosure proceeding.

19 (12) A mortgage loan originator who has obtained a license  
20 under Chapter 3.5 (commencing with Section 50140), provided  
21 that the mortgage loan originator is employed by a residential  
22 mortgage lender or servicer.

23 (13) A registered mortgage loan originator described in  
24 subdivision (e).

25 (d) An individual, unless specifically exempted under  
26 subdivision (e), shall not engage in the business of a mortgage  
27 loan originator with respect to any dwelling located in this state  
28 without first obtaining and maintaining annually a license in  
29 accordance with the requirements of Chapter 3.5 (commencing  
30 with Section 50140) and any rules promulgated by the  
31 commissioner under that chapter. Each licensed mortgage loan  
32 originator shall register with and maintain a valid unique identifier  
33 issued by the Nationwide Mortgage Licensing System and Registry.

34 (e) A registered mortgage loan originator is exempt from  
35 licensure under subdivisions (a) and (d), when he or she is  
36 employed by a depository institution, a subsidiary of a depository  
37 institution that is owned and controlled by a depository institution  
38 and regulated by a federal banking agency, or an institution  
39 regulated by the Farm Credit Administration.

1 (f) A loan processor or underwriter who is an independent  
2 contractor employed by a residential mortgage lender or servicer  
3 may not perform the activities of a loan processor or underwriter  
4 under this division unless the independent contractor loan processor  
5 or underwriter obtains and maintains a license under Section 50120.

6 SEC. 9. Section 50003 of the Financial Code is amended to  
7 read:

8 50003. (a) “Annual audit” means a certified audit of the  
9 licensee’s books, records, and systems of internal control performed  
10 by an independent certified public accountant in accordance with  
11 generally accepted accounting principles and generally accepted  
12 auditing standards.

13 (b) “Borrower” means the loan applicant.

14 (c) “Buy” includes exchange, offer to buy, or solicitation to  
15 buy.

16 (d) “Commissioner” means the Commissioner of Corporations.

17 (e) “Control” means the possession, directly or indirectly, of  
18 the power to direct, or cause the direction of, the management and  
19 policies of a licensee under this division, whether through voting  
20 or through the ownership of voting power of an entity that  
21 possesses voting power of the licensee, or otherwise. Control is  
22 presumed to exist if a person, directly or indirectly, owns, controls,  
23 or holds 10 percent or more of the voting power of a licensee or  
24 of an entity that owns, controls, or holds, with power to vote, 10  
25 percent or more of the voting power of a licensee. No person shall  
26 be deemed to control a licensee solely by reason of his or her status  
27 as an officer or director of the licensee.

28 (f) “Depository institution” has the same meaning as in Section  
29 3 of the Federal Deposit Insurance Act, and includes any credit  
30 union.

31 (g) “Engage in the business” means the dissemination to the  
32 public, or any part of the public, by means of written, printed, or  
33 electronic communication or any communication by means of  
34 recorded telephone messages or spoken on radio, television, or  
35 similar communications media, of any information relating to the  
36 making of residential mortgage loans, the servicing of residential  
37 mortgage loans, or both. “Engage in the business” also means,  
38 without limitation, making residential mortgage loans or servicing  
39 residential mortgage loans, or both.

1 (h) “Federal banking agencies” means the Board of Governors  
2 of the Federal Reserve System, the Comptroller of the Currency,  
3 the Director of the Office of Thrift Supervision, the National Credit  
4 Union Administration, and the Federal Deposit Insurance  
5 Corporation.

6 (i) “In this state” includes any activity of a person relating to  
7 making or servicing a residential mortgage loan that originates  
8 from this state and is directed to persons outside this state, or that  
9 originates from outside this state and is directed to persons inside  
10 this state, or that originates inside this state and is directed to  
11 persons inside this state, or that leads to the formation of a contract  
12 and the offer or acceptance thereof is directed to a person in this  
13 state (whether from inside or outside this state and whether the  
14 offer was made inside or outside the state).

15 (j) “Institutional investor” means the following:

16 (1) The United States or any state, district, territory, or  
17 commonwealth thereof, or any city, county, city and county, public  
18 district, public authority, public corporation, public entity, or  
19 political subdivision of a state, district, territory, or commonwealth  
20 of the United States, or any agency or other instrumentality of any  
21 one or more of the foregoing, including, by way of example, the  
22 Federal National Mortgage Association and the Federal Home  
23 Loan Mortgage Corporation.

24 (2) Any bank, trust company, savings bank or savings and loan  
25 association, credit union, industrial bank or industrial loan  
26 company, personal property broker, consumer finance lender,  
27 commercial finance lender, or insurance company, or subsidiary  
28 or affiliate of one of the preceding entities, doing business under  
29 the authority of or in accordance with a license, certificate, or  
30 charter issued by the United States or any state, district, territory,  
31 or commonwealth of the United States.

32 (3) Trustees of pension, profit-sharing, or welfare funds, if the  
33 pension, profit-sharing, or welfare fund has a net worth of not less  
34 than fifteen million dollars (\$15,000,000), except pension,  
35 profit-sharing, or welfare funds of a licensee or its affiliate,  
36 self-employed individual retirement plans, or individual retirement  
37 accounts.

38 (4) A corporation or other entity with outstanding securities  
39 registered under Section 12 of the federal Securities Exchange Act

1 of 1934 or a wholly owned subsidiary of that corporation or entity,  
2 provided that the purchaser represents either of the following:

3 (A) That it is purchasing for its own account for investment and  
4 not with a view to, or for sale in connection with, any distribution  
5 of a promissory note.

6 (B) That it is purchasing for resale pursuant to an exemption  
7 under Rule 144A (17 C.F.R. 230.144A) of the Securities and  
8 Exchange Commission.

9 (5) An investment company registered under the Investment  
10 Company Act of 1940; or a wholly owned and controlled subsidiary  
11 of that company, provided that the purchaser makes either of the  
12 representations provided in paragraph (4).

13 (6) A residential mortgage lender or servicer licensed to make  
14 residential mortgage loans under this law or an affiliate or  
15 subsidiary of that person.

16 (7) Any person who is licensed as a securities broker or  
17 securities dealer under any law of this state, or of the United States,  
18 or any employee, officer, or agent of that person, if that person is  
19 acting within the scope of authority granted by that license or an  
20 affiliate or subsidiary controlled by that broker or dealer, in  
21 connection with a transaction involving the offer, sale, purchase,  
22 or exchange of one or more promissory notes secured directly or  
23 indirectly by liens on real property or a security representing an  
24 ownership interest in a pool of promissory notes secured directly  
25 or indirectly by liens on real property, and the offer and sale of  
26 those securities is qualified under the California Corporate  
27 Securities Law of 1968 or registered under federal securities laws,  
28 or exempt from qualification or registration.

29 (8) A licensed real estate broker selling the loan to an  
30 institutional investor specified in paragraphs (1) to (7), inclusive,  
31 or paragraph (9) or (10).

32 (9) A business development company as defined in Section  
33 2(a)(48) of the Investment Company Act of 1940 or a Small  
34 Business Investment Company licensed by the United States Small  
35 Business Administration under Section 301(c) or (d) of the Small  
36 Business Investment Act of 1958.

37 (10) A syndication or other combination of any of the foregoing  
38 entities that is organized to purchase a promissory note.

39 (11) A trust or other business entity established by an  
40 institutional investor for the purpose of issuing or facilitating the

1 issuance of securities representing undivided interests in, or rights  
2 to receive payments from or to receive payments primarily from,  
3 a pool of financial assets held by the trust or business entity,  
4 provided that all of the following apply:

5 (A) The business entity is not a sole proprietorship.

6 (B) The pool of assets consists of one or more of the following:

7 (i) Interest-bearing obligations.

8 (ii) Other contractual obligations representing the right to receive  
9 payments from the assets.

10 (iii) Surety bonds, insurance policies, letters of credit, or other  
11 instruments providing credit enhancement for the assets.

12 (C) The securities will be either one of the following:

13 (i) Rated as “investment grade” by Standard and Poor’s  
14 Corporation or Moody’s Investors Service, Inc. “Investment grade”  
15 means that the securities will be rated by Standard and Poor’s  
16 Corporation as AAA, AA, A, or BBB or by Moody’s Investors  
17 Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings  
18 with “+” or “—” designation or other variations that occur within  
19 those ratings.

20 (ii) Sold to an institutional investor.

21 (D) The offer and sale of the securities is qualified under the  
22 California Corporate Securities Law of 1968 or registered under  
23 federal securities laws, or exempt from qualification or registration.

24 (k) “Institutional lender” means the following:

25 (1) The United States or any state, district, territory, or  
26 commonwealth thereof, or any city, county, city and county, public  
27 district, public authority, public corporation, public entity, or  
28 political subdivision of a state, district, territory, or commonwealth  
29 of the United States, or any agency or other instrumentality of any  
30 one or more of the foregoing, including, by way of example, the  
31 Federal National Mortgage Association and the Federal Home  
32 Loan Mortgage Corporation.

33 (2) Any bank, trust company, savings bank or savings and loan  
34 association, credit union, industrial loan company, or insurance  
35 company, or service or investment company that is wholly owned  
36 and controlled by one of the preceding entities, doing business  
37 under the authority of and in accordance with a license, certificate,  
38 or charter issued by the United States or any state, district, territory,  
39 or commonwealth of the United States.



1 (3) Any corporation with outstanding securities registered under  
2 Section 12 of the Securities Exchange Act of 1934 or any wholly  
3 owned subsidiary of that corporation.

4 (4) A residential mortgage lender or servicer licensed to make  
5 residential mortgage loans under this law.

6 (l) “Law” means the California Residential Mortgage Lending  
7 Act.

8 (m) “Lender” means a person that (1) is an approved lender for  
9 the Federal Housing Administration, Veterans Administration,  
10 Farmers Home Administration, Government National Mortgage  
11 Association, Federal National Mortgage Association, or Federal  
12 Home Loan Mortgage Corporation, (2) directly makes residential  
13 mortgage loans, and (3) makes the credit decision in the loan  
14 transactions.

15 (n) “Licensee” means, depending on the context, a person  
16 licensed under Chapter 2 (commencing with Section 50120),  
17 Chapter 3 (commencing with Section 50130), or Chapter 3.5  
18 (commencing with Section 50140).

19 (o) “Makes or making residential mortgage loans” or “mortgage  
20 lending” means processing, underwriting, or as a lender using or  
21 advancing one’s own funds, or making a commitment to advance  
22 one’s own funds, to a loan applicant for a residential mortgage  
23 loan.

24 (p) “Mortgage loan,” “residential mortgage loan,” or “home  
25 mortgage loan” means a federally related mortgage loan as defined  
26 in Section 3500.2 of Title 24 of the Code of Federal Regulations,  
27 or a loan made to finance construction of a one-to-four family  
28 dwelling.

29 (q) “Mortgage servicer” or “residential mortgage loan servicer”  
30 means a person that (1) is an approved servicer for the Federal  
31 Housing Administration, Veterans Administration, Farmers Home  
32 Administration, Government National Mortgage Association,  
33 Federal National Mortgage Association, or Federal Home Loan  
34 Mortgage Corporation, and (2) directly services or offers to service  
35 mortgage loans.

36 (r) “Nationwide Mortgage Licensing System and Registry”  
37 means a mortgage licensing system developed and maintained by  
38 the Conference of State Bank Supervisors and the American  
39 Association of Residential Mortgage Regulators for the licensing  
40 and registration of licensed mortgage loan originators.

1 (s) “Net worth” has the meaning set forth in Section 50201.

2 (t) “Own funds” means (1) cash, corporate capital, or warehouse  
3 credit lines at commercial banks, savings banks, savings and loan  
4 associations, industrial loan companies, or other sources that are  
5 liability items on a lender’s financial statements, whether secured  
6 or unsecured, or (2) a lender’s affiliate’s cash, corporate capital,  
7 or warehouse credit lines at commercial banks or other sources  
8 that are liability items on the affiliate’s financial statements,  
9 whether secured or unsecured. “Own funds” does not include funds  
10 provided by a third party to fund a loan on condition that the third  
11 party will subsequently purchase or accept an assignment of that  
12 loan.

13 (u) “Person” means a natural person, a sole proprietorship, a  
14 corporation, a partnership, a limited liability company, an  
15 association, a trust, a joint venture, an unincorporated organization,  
16 a joint stock company, a government or a political subdivision of  
17 a government, and any other entity.

18 (v) “Residential real property” or “residential real estate” means  
19 real property located in this state that is improved by a one-to-four  
20 family dwelling.

21 (w) “SAFE Act” means the federal Secure and Fair Enforcement  
22 for Mortgage Licensing Act of 2008 (Public Law 110-289).

23 (x) “Service” or “servicing” means receiving more than three  
24 installment payments of principal, interest, or other amounts placed  
25 in escrow, pursuant to the terms of a mortgage loan and performing  
26 services by a licensee relating to that receipt or the enforcement  
27 of its receipt, on behalf of the holder of the note evidencing that  
28 loan.

29 (y) “Sell” includes exchange, offer to sell, or solicitation to sell.

30 (z) “Unique identifier” means a number or other identifier  
31 assigned by protocols established by the Nationwide Mortgage  
32 Licensing System and Registry.

33 (aa) For purposes of Sections 50142, 50143, and 50145,  
34 “nontraditional mortgage product” means any mortgage product  
35 other than a 30-year fixed rate mortgage.

36 (ab) For purposes of Section 50141, “expungement” means the  
37 subsequent order under the provisions of Section 1203.4 of the  
38 Penal Code allowing such individual to withdraw his or her plea  
39 of guilty and to enter a plea of not guilty, or setting aside the verdict  
40 of guilty or dismissing the accusation, information, or indictment.

1 With respect to criminal convictions in another state, that state's  
2 definition of expungement will apply.

3 SEC. 10. Section 50003.5 of the Financial Code is amended  
4 to read:

5 50003.5. (a) "Mortgage loan originator" means an individual  
6 who, for compensation or gain, or in the expectation of  
7 compensation or gain, takes a residential mortgage loan application  
8 or offers or negotiates terms of a residential mortgage loan.

9 (b) Mortgage loan originator does not include any of the  
10 following:

11 (1) An individual who performs purely administrative or clerical  
12 tasks on behalf of a person meeting the definition of a mortgage  
13 loan originator, except as provided in subdivision (c) of Section  
14 50003.6. The term "administrative or clerical tasks" means the  
15 receipt, collection, and distribution of information common for  
16 the processing or underwriting of a loan in the mortgage industry  
17 and communication with a consumer to obtain information  
18 necessary for the processing or underwriting of a residential  
19 mortgage loan, to the extent that the communication does not  
20 include offering or negotiating loan rates or terms, or counseling  
21 consumers about residential mortgage loan rates or terms.

22 (2) An individual who solely renegotiates terms for existing  
23 mortgage loans held or serviced by his or her employer and who  
24 does not otherwise act as a mortgage loan originator, unless the  
25 United States Department of Housing and Urban Development or  
26 a court of competent jurisdiction determines that the SAFE Act  
27 requires that employee to be licensed as a mortgage loan originator  
28 under state laws implementing the SAFE Act.

29 (3) An individual that is solely involved in extensions of credit  
30 relating to timeshare plans, as that term is defined in Section  
31 101(53D) of Title 11 of the United States Code.

32 (4) An individual licensed as a mortgage loan originator pursuant  
33 to Article 2.1 (commencing with Section 10166.01) of Chapter 3  
34 of Part 1 of Division 4 of the Business and Professions Code and  
35 the SAFE Act.

36 (5) An individual who is an employee of a federal, state, or local  
37 government agency or housing finance agency and who acts as a  
38 loan originator only pursuant to his or her official duties as an  
39 employee of the federal, state, or local government agency or  
40 housing finance agency.

1 (A) For purposes of this paragraph, the term “employee” means  
2 an individual whose manner and means of performance of work  
3 are subject to the right of control of, or are controlled by, a person,  
4 and whose compensation for federal income tax purposes is  
5 reported, or required to be reported, on a W-2 form issued by the  
6 controlling person.

7 (B) For purposes of this paragraph, the term “housing finance  
8 agency” means any authority:

9 (i) That is chartered by a state to help meet the affordable  
10 housing needs of the residents of the state.

11 (ii) That is supervised directly or indirectly by the state  
12 government.

13 (iii) That is subject to audit and review by the state in which it  
14 operates.

15 (6) (A) An employee of a bona fide nonprofit organization who  
16 exclusively originates residential mortgage loans for a bona fide  
17 nonprofit organization, and who acts as a mortgage loan originator  
18 only with respect to residential mortgage loans with terms that are  
19 favorable to the borrower.

20 (B) To qualify for the exemption under this paragraph, the bona  
21 fide nonprofit organization under this paragraph must register with  
22 the department on a form prescribed by the commissioner, along  
23 with documentation of all of the following by December 31 of  
24 each year:

25 (i) Status of a tax-exempt organization under Section 501(c)(3)  
26 of the Internal Revenue Code of 1986.

27 (ii) That the organization promotes affordable housing or  
28 provides home ownership education or similar services.

29 (iii) That the organization conducts its activities in a manner  
30 that serves public or charitable purposes, rather than commercial  
31 purposes.

32 (iv) That the organization receives funding and revenue, and  
33 charges fees in a manner that does not incentivize the organization  
34 or its employees to act other than in the best interests of its clients.

35 (v) That the organization compensates employees in a manner  
36 that does not incentivize employees to act other than in the best  
37 interests of its clients.

38 (vi) That the organization provides to, or identifies for, the  
39 borrower residential mortgage loans with terms favorable to the

1 borrower and comparable to mortgage loans and housing assistance  
2 provided under government housing assistance programs.

3 (vii) That the organization is certified by the United States  
4 Department of Housing and Urban Development as a housing  
5 counselor who engages solely in traditional housing counseling  
6 services, if applicable.

7 (C) The commissioner may periodically require reports  
8 regarding the activities of the bona fide nonprofit organization,  
9 and shall examine the nonprofit organization's books and records  
10 in accordance with the regulations of the United States Department  
11 of Housing and Urban Development, or any successor guidance  
12 or requirement by the Consumer Financial Protection Bureau. If  
13 the nonprofit organization fails to provide documentation as  
14 required by subparagraph (B), or if it does not continue to meet  
15 the criteria under subparagraph (B), the commissioner may revoke  
16 the nonprofit organization's status as a registered bona fide  
17 nonprofit organization.

18 (D) For residential mortgage loans to have terms that are  
19 favorable to the borrower, the terms shall be consistent with loan  
20 origination in a public or charitable context, rather than a  
21 commercial context.

22 (E) In making its determinations and examinations, the  
23 commissioner may rely on the receipt and review of:

24 (i) Reports filed with federal, state, or local housing agencies  
25 and authorities.

26 (ii) Reports and attestations prescribed by the commissioner by  
27 rule or order.

28 (c) "Registered mortgage loan originator" means any individual  
29 who is all of the following:

30 (1) Meets the definition of mortgage loan originator.

31 (2) Is an employee of a depository institution, a subsidiary that  
32 is owned and controlled by a depository institution and regulated  
33 by a federal banking agency, or an institution regulated by the  
34 Farm Credit Administration.

35 (3) Is registered with, and maintains a unique identifier through,  
36 the Nationwide Mortgage Licensing System and Registry.

37 (d) "Loan processor or underwriter" means an individual who  
38 performs clerical or support duties as an employee at the direction  
39 of, and subject to the supervision and instruction of, a mortgage

1 loan originator licensed by the state or a registered mortgage loan  
2 originator.

3 SEC. 11. Section 50316.5 is added to the Financial Code, to  
4 read:

5 50316.5. Notwithstanding any other law, any application for  
6 licensure, amendment to the application or registration document  
7 or notice filed under any of the laws administered by the  
8 Department of Corporations, or record otherwise required to be  
9 filed in this state as an electronic record pursuant to a nationwide  
10 central depository for information regarding licensees, including  
11 mortgage loan originators, or any electronic record filed through  
12 the Nationwide Mortgage Licensing System and Registry, shall  
13 be deemed to be a valid original document upon reproduction to  
14 paper form by the Department of Corporations.

15 SEC. 12. Section 50327 of the Financial Code is amended to  
16 read:

17 50327. (a) The commissioner may, after notice and a  
18 reasonable opportunity to be heard, deny, decline to renew,  
19 suspend, or revoke any license if the commissioner finds that:

20 (1) The licensee has violated any provision of this division or  
21 any rule or order of the commissioner thereunder.

22 (2) Any fact or condition exists that, if it had existed at the time  
23 of the original application for the license, reasonably would have  
24 warranted the commissioner in refusing to issue the license  
25 originally.

26 (b) The power of investigation and examination by the  
27 commissioner is not terminated by the denial, nonrenewal,  
28 surrender, suspension, or revocation of any license issued by him  
29 or her.

30 SEC. 13. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the penalty  
35 for a crime or infraction, within the meaning of Section 17556 of  
36 the Government Code, or changes the definition of a crime within  
37 the meaning of Section 6 of Article XIII B of the California  
38 Constitution.

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